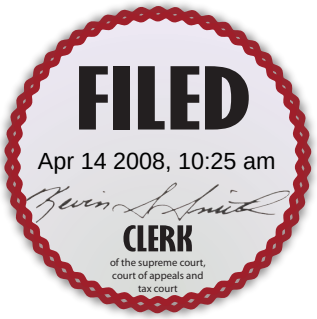

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IN THE COURT OF APPEALS OF INDIANA

JERRY FABER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0709-CR-534
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0609-FA-181671

April 14, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jerry Faber appeals his conviction for Attempted Aggravated Battery,[1] a class B felony. Faber argues that the evidence is insufficient to support his conviction and that the ten-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm.

FACTS

On September 20, 2006, William Pate was conducting a crime watch meeting at the clubhouse at his apartment complex in Indianapolis. As the meeting ended, Faber, a resident of the complex, entered the clubhouse and approached Pate, who noticed that Faber smelled of alcohol. Pate and another resident escorted Faber outside and walked with him toward his apartment. Faber asked them if they wanted to lick his hands, and they declined. Faber asked Pate if he would help him "kill all the non-believers," Pate declined, and Pate and the other resident returned to the clubhouse. Tr. p. 28.

Marion County Sheriff's Deputy Brian Schemenaur had attended the meeting. He had exited the clubhouse and was walking to his vehicle when Faber approached him and said that he wanted to talk. Deputy Schemenaur observed that Faber smelled of alcohol and appeared agitated. The deputy instructed Faber to return to his apartment, and after Faber refused, Deputy Schemenaur walked Faber to one of the apartment buildings and again directed him to return home. Faber grew hostile and grabbed the deputy's arm. Deputy Schemenaur radioed for assistance and pulled out his taser.

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[1] Ind. Code § 35-42-2-1.5, § 35-45-5-1.

After screaming at the deputy to shoot him, Faber said that he had something for the deputy and ran upstairs into an apartment. He returned with a ten-inch knife. By that time, Deputies Brian McCann and Jason Leitze had arrived to assist Deputy Schemenaur. Deputy Schemenaur repeatedly demanded that Faber drop the knife, but Faber refused, saying "shoot me. You know, I'm not dropping the knife. I'm going to kill you. Don't follow me. Don't come after me." Id. at 88. Faber then turned around and ran out the back door of the apartment building.

Deputies Schemenaur and McCann followed Faber through a wooded area that bordered the apartment complex. Four different times, Faber stopped running and threatened to kill the deputies if they continued to follow him. Eventually, Faber stopped and Deputy Schemenaur fired his taser, but it failed to deploy properly. At that point, Faber gave a "battle cry" and charged at Deputy Schemenaur with the knife. Id. at 98. Deputy McCann shot at Faber as he was sprinting toward Deputy Schemenaur, and Deputy Schemenaur also pulled out his firearm and fired as Faber tackled him. They both fell to the ground. Faber, who was shot once during the encounter, lay on the ground and repeatedly stated that he was sorry.

On September 25, 2006, the State charged Faber with class A attempted murder. Following an August 9, 2007, bench trial, the trial court found Faber guilty of the lesser-included offense of class B felony attempted aggravated battery. The trial court held a sentencing hearing on August 17, 2007, finding Faber's criminal history to be an aggravator and his mental health and the fact that he had been shot during the incident as mitigating circumstances. Concluding that the aggravator and mitigators were in balance,

the trial court imposed the advisory sentence of ten years imprisonment. Faber now appeals.

DISCUSSION AND DECISION

I. Sufficiency

Faber first challenges the sufficiency of the evidence, arguing that the State failed to prove that he acted with the requisite intent. When addressing sufficiency of the evidence challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). If there is conflicting evidence, we consider that evidence only in the light most favorable to the judgment. Id. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. Id. at 147.

To convict Faber of attempted aggravated battery, the State was required to prove beyond a reasonable doubt that he made a substantial step toward knowingly or intentionally inflicting an injury creating a substantial risk of death or impairment. I.C. § 35-42-2-1.5, § 35-41-5-1. A person engages in conduct knowingly "if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2(B).

Here, after engaging in a hostile confrontation with a deputy, Faber ran into an apartment, retrieved a ten-inch knife, and returned to threaten the deputy with the weapon. He ignored demands to drop the knife, again threatened to kill the deputies, and

proceeded to lead them on a chase through a wooded area. Eventually, he made a "battle cry," tr. p. 98, and charged at Deputy Schemenaur as he brandished the knife. After Faber was shot and fell to the ground, he apologized repeatedly, indicating that he understood that he had behaved wrongly.

Faber directs our attention to evidence establishing that he was under the influence of alcohol and had mental health problems, contending that this evidence shows that he was incapable of acting with the requisite specific intent. This, however, amounts to a request that we reweigh the evidence—a practice in which we do not engage when evaluating the sufficiency of the evidence supporting a conviction. We find that the State provided sufficient evidence of Faber's intent to support his conviction.

II. Appropriateness

Faber next argues that the ten-year advisory sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. In reviewing an appropriateness challenge pursuant to Appellate Rule 7(B), we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As to the nature of Faber's offense, he was given repeated opportunities to return to his apartment and disengage from the conflict. He declined, instead retrieving a ten-inch knife and repeatedly threatening three deputies. He led the deputies on a nighttime chase through a wooded area and eventually charged at one of them as he brandished the

weapon. We do not find the nature of the offense to aid Faber's inappropriateness argument.

As for Faber's character, as a juvenile, he amassed true findings for delinquency, criminal mischief, and truancy. As an adult, he has been convicted of class D felony battery on police, three counts of class A misdemeanor resisting law enforcement, class C misdemeanor operating vehicle while intoxicated, class A misdemeanor criminal recklessness, class D felony and class A misdemeanor driving while suspended, two unspecified convictions for resisting law enforcement, an unspecified conviction for operating a vehicle while intoxicated, and an unspecified conviction for driving while suspended. Faber's lengthy criminal history, which includes multiple convictions evincing his disrespect for police officers, does not aid his appropriateness argument.

Faber directs our attention to his mental health issues, which the trial court found include depression, nervousness, anxiety, and alcoholism. We acknowledge, as did the trial court, that Faber struggles with these disorders, but do not find that they render the imposition of the advisory sentence inappropriate. In sum, we do not find the sentence imposed by the trial court to be inappropriate in light of the nature of the offense and Faber's character.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.